IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

WP(C).No. 16316 of 2004(P)

PETITIONER:

K.MADHU, CONTRACTOR, TC. 29/1656,
VYSAKH, PERUNTHANNI, THIRUVANANTHAPURAM-8.

BY ADV. SRI.SABU GEORGE

RESPONDENTS:

---

1. CORPORATION OF THIRUVANANTHAPURAM,
THIRUVANANTHAPURAM, REPRESENTED BY ITS
SECRETARY.

2. STATE OF KERALA REPRESENTED BY ITS
SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVT. SECRETARIAT, TRIVANDRUM.
(IMPLEADED AS PER ORDER DT.25.8.2004 IN.
I.A.11484/2004)

BY ADV. SRI.N.NANDAKUMARA MENON,SC,TVM CORPN.
GOVERNMENT PLEADER SRI.C.M. SURESH BABU.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP.16316/2004)

EXT.P1: TRUE COPY OF JUDGMENT DT. 5/8/2002 IN OP.22230/02.

EXT.P2: TRUE COPY OF LETTER DT. 25/10/2002.

EXT.P3: TRUE COPY OF REPLY DT. 27/11/2002.

EXT.P4: TRUE COPY OF JUDGMENT DT. 24/2/2003. IN CC.1168/02.

EXT.P5: TRUE COPY OF REPRESENTTION DT. 26/5/2004.

EXT.P6: TRUE COPY OF ORDER DT. 5/7/2004 IN OP.313/01.

EXT.P7: TRUE COPY OF MINUTES DT. 5/2/2001.

EXT.P8: TRUE COPY OF LETTER DT. 3/12/2004.

IA.12794/06:

EXT.P6: TRUE COPY OF ORDER DT. 7/6/2006.

EXT.P7: TRUE COPY OF APPLILCATION DT. 28/7/2006.

RESPONDENTS' EXHIBITS:

ANNEXURE A: COPY OF STATEMENT DT. 23/2/03 FILED BY CORPORATION.

ANNEXURE B: COPY OF AUDIT REPORT.

ANNEXURE C; COPY OF REPRESENTATION DT. 11/10/2002.

EXT.R2(A): COPY OF GOVT.ORDER DT. 7/6/2006.

EXT.R2(B): DO. DT. 6/12/2006.

A.K. Basheer, J.

- -

W.P(C) No.16316 of 2004

- -

Dated this the 18th day of August, 2007.

J U D G M E N T

Petitioner who is a registered Contractor was entrusted with certain works in Thiruvananthapuram Corporation in the year 1990-91, 1996-97, 2000-2002 etc. Petitioner had completed those works and according to him a total sum of Rs.9,56,661/- is due from the Corporation. Apart from the above sum, he is also entitled to get the security deposit, retention amount, E.M.D etc.

2. It appears that the Vigilance and Anti Corruption Bureau had registered a case against the petitioner and some others in connection with certain civil works entrusted by the Corporation during the periods referred to above. The amount payable to the petitioner was withheld because of the pendency of the vigilance enquiry. According to the petitioner, he had submitted Ext.P5 request for disbursement of the amount in May 2004. But no action was taken by the Corporation on the said request. It is in the above circumstances that the petitioner has preferred this writ petition praying for appropriate reliefs.

3. When this writ petition came up for further consideration on July 11, 2007, the Officer in charge of the Vigilance enquiry was directed to file a status report regarding the enquiry. The Officer who had appeared before the court in person submitted that enquiry in respect of 6 out of the 12 charges was still in progress and as regards the other 6, a report had already been filed. Thereafter, Sri.Suresh Babu, Deputy Superintendent of Police, Vigilance and

Anti Corruption Bureau, Thiruvananthapuram has filed his report on July 18, 2007 as directed.

4. It is seen from the affidavit filed by the Deputy Superintendent of Police on August 16, 2007 that petitioner was entrusted with the work of beautification of the premises of Sree Padmanabha Swamy Temple initially for a sum of Rs.12 lakhs. But later it was enhanced to Rs.38 lakhs. Technical sanction was accorded on June 25, 1997 only for 14.5 lakhs. But the work was awarded to the petitioner at 38% above the estimate value. Still further, the estimate amount was revised to Rs.33.9. lakhs and administrative sanction was given by the Standing Committee (Works) of the Corporation. A total sum of 28,39,072/- was paid to the petitioner. But in the site inspection held by the Assistant Executive Engineer, Vigilance and Anti Corruption Bureau it was revealed that petitioner with the connivance of other suspect officers had obtained a pecuniary advantage of Rs.1,84,598/- It is further averred that the then Deputy Superintendent, and Superintendent of Police, Vigilance and Anti Corruption Bureau, Southern Range, Thiruvanantpuram had recommended to the Director to register a case against the petitioner. But the Director had recommended only recovery of Rs.1,84,598/- from the petitioner. Relevant portion from the report of the Director dated December 15, 2006 has been extracted in the affidavit. It is further averred by the Officer that the report of the Director is pending consideration before the Government.

5. Anyhow, the fact remains that as against the claim of Rs.9,56,661/- made by the petitioner in relation to the contracts undertaken by him in the Corporation, the Director of Vigilance and Anti Corruption Bureau has recommended recovery of only a sum of Rs.1,84,598/-. Therefore I do not find any reason why the balance amount shall not be released to the petitioner immediately. It is made clear that I have not considered either the merit of the report of the Director or the various contentions raised by the petitioner in this writ petition It will be open to the Government to take a decision in the matter on the basis of the report of the Director of Vigilance and Anti Corruption Bureau, in accordance with law.

6. In this context it may also be pertinent to note that the Government had in fact given permission to the Corporation to release the amount to the petitioner on his furnishing bank guarantee if the vigilance enquiry had not been completed within a month. Ext.P6 is stated to be the order issued by the Government in this regard on June 7, 2006.

Anyhow, having regard to the entire facts and circumstances and particularly since the unlawful monetary gain allegedly made by the petitioner is only to the tune of Rs.1,84,598/-, it has to be held that the petitioner is entitled to get the balance amount. I hasten to add that I have not considered the tenability or sustainability of the so called finding made by the Vigilance and Anti Corruption Bureau in its report. It will be open to the

petitioner to challenge the finding, if any, in this regard entered by the Vigilance Department.

Therefore the writ petition is disposed of with a direction to the Corporation to release the amount payable to the petitioner after deducting an amount of Rs.1,84,598/-. Rs.3 lakhs shall be released to the petitioner on or before August 25, 2007 and the balance, on or before September 15, 2007.

A.K. Basheer
Judge.

an.